CLERK'S COPY.

CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 910

MILWAUKEE COUNTY

vs.

M. E. WHITE COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FILED APRIL 26, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

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MILWAUKEE COUNTY

vs.

W. E. WHITE COMPANY

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 2, 1935.

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 5322. OCTOBER TERM, 1934, JANUARY SESSION, 1935.

MILWAUKEE COUNTY, *Appellant*,
vs.
M. E. WHITE COMPANY, a corporation, *Appellee*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

To the Honorable the Supreme Court of the United States:

On this appeal a question of law has arisen concerning which this Court is in doubt and desires the advice thereon of the Supreme Court.

The relevant facts out of which the legal question grows are:

Appellant, Milwaukee County, as a county of the State of Wisconsin and a citizen of said state, brought suit in the District Court of the United States for the Northern District of Illinois against appellee, M. E. White Company, a corporation, citizen, and inhabitant of the State of Illinois.

Appellant filed its declaration, wherein it was alleged that there was diversity of citizenship of the parties, and that the matter in controversy, exclusive of interest and costs, exceeds the sum of $3,000;

That on January 26, 1933, in the Circuit Court of the County of Milwaukee in the State of Wisconsin, the same being a court of general jurisdiction, a judgment was rendered in favor of said Milwaukee County and against the said M. E. White Company in the sum of $52,156.84, together with costs, and that such judgment was for income taxes duly assessed against the said M. E. White Company upon its income earned by said M. E. White Company upon its business transacted in the State of Wisconsin under appellee's license to transact business within that state.

After the entry of said judgment in appellant's favor in the Circuit Court of Milwaukee County, appellant brought its said suit on said judgment in the United States District Court

for the Northern District of Illinois, and attached hereunto, and marked Exhibit 1, is a copy of the declaration which it filed in its said action in the said District Court.

On August 8, 1933, said M. E. White Company, by its attorneys, entered its appearance in the said District Court, and on December 11, 1933, filed its motion in said District Court to dismiss the said suit upon the ground, *inter alia*, that "IV. That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action," which motion to dismiss will more fully appear from a copy of said motion hereunto attached as Exhibit 2 hereof.

Upon the hearing of the said motion to dismiss, the District Court considered only the proposition "That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action," and decided that the District Court will not take jurisdiction thereof, and dismissed the action, giving judgment for costs against appellant. The memorandum of the Court's decision will more fully appear from a copy thereof which is hereunto attached as Exhibit 3 hereof.

The question concerning which this Court desires advice of the Supreme Court is:

Should a United States District Court in and for the State of Illinois, having jurisdiction of the parties, entertain jurisdiction of an action therein brought, based upon a valid judgment for over $3,000 rendered by a court of competent jurisdiction in the State of Wisconsin against the same defendant, which judgment was predicated upon an income tax due from the defendant to the State of Wisconsin?

The clerk of this Court is directed to transmit a certified copy hereof to the Supreme Court.

EVAN A. EVANS
WILLIAM M. SPARKS
SAMUEL ALSCHULER
Judges of the United States Circuit Court of Appeals for the Seventh Circuit.

Chicago, Illinois,
April 12, 1935.

EXHIBIT 1.

SECOND AMENDED DECLARATION.

Milwaukee County, plaintiff, by William A. Zabel, Oliver L. O'Boyle, Clark J. A. Hazelwood, and James G. Culbertson, its attorneys, complains of M. E. White Company, a corporation, existing under and by virtue of the laws of the State of Illinois, defendant, of a plea of debt:

First Count.

Paragraph One—The ground upon which the jurisdiction of this Court depends is diversity of citizenship. Plaintiff, Milwaukee County, is now and was at all the times herein mentioned a county created, organized and existing under the laws of the State of Wisconsin, and a citizen of said State. Defendant, M. E. White Company, is a corporation organized and existing under the laws of the State of Illinois, is a citizen and inhabitant of said State and has a regular and established place of business in the City of Chicago in said State.

Paragraph Two—The matter in controversy herein exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars ($3000.00).

Paragraph Three—Whereas, heretofore to-wit: at the January Term in the year 1933, of the Circuit Court of the County of Milwaukee, in the State of Wisconsin, the same being a court of general jurisdiction duly created and organized under the laws of said State, to-wit: on the 26th day of January, A. D. 1933, a certain judgment was entered in favor of the plaintiff herein, and against the defendant herein, the record of which is in words and figures as follows, to-wit:

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

SUMMONS.

The State of Wisconsin, to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service,

and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

GEORGE A. BOWMAN,
District Attorney,
O. L. O'BOYLE,
Corporation Counsel,
CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel,
Attorneys for Plaintiff.

P. O. Address:
Court House,
Milwaukee,
Milwaukee County,
Wisconsin.

Filed Nov. 1, 1932, C. C. Maas, Clerk.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

Filed Nov. 1, 1932. C. C. Maas, Clerk.

The plaintiff by George A. Bowman, District attorney and O. L. O'Boyle, Corporation Counsel, and Clark J. A. Hazelwood, for cause of action against the above named defendant alleges and respectfully shows to the Court:

1st. That plaintiff is a municipal body corporate, organized and existing under and pursuant to the Constitution and laws of the State of Wisconsin;

2nd. That plaintiff is suing herein for the collection of delinquent income taxes heretofore levied against the defendant by the authorities of the State of Wisconsin as provided by law and is duly authorized so to do.

3rd. That the defendant is a corporation organized and existing under and pursuant to the laws of the State of Illinois and duly licensed to transact business within the State of Wisconsin as a foreign corporation.

4th. That heretofore and on or about the 4th day of February, 1932, an assessment of income tax indebtedness against said defendant corporation was duly made by the Tax Commission of the State of Wisconsin; that notice of said assessment was given by registered mail to the defendant corporation on or about said date, Feb. 4, 1932; that thereafter the defendant corporation objected to said assessment as made, and, in accordance with the law, a hearing upon the said assessment, as an appeal, was held on the 9th day of June, 1932 before the Wisconsin Tax Commission at Madison, Wisconsin; that at said hearing the defendant herein was given due opportunity to submit proof in support of its objections to said assessment; that on the 29th day of July, 1932 the Tax Commission entered its order with respect to said appeal, upholding the said assessment for income tax, and overruling the defendant corporation's objections thereto; that on or about said 29th day of July, 1932, written notice of the said decision of the Tax Commission was given the defendant by registered mail; that more than thirty days have passed since the giving of said notice and no appeal has been taken, and that, therefore, the right of the defendant to further contest the validity of said assessment has now expired.

5th. That pursuant to the said decision of the Wisconsin Tax Commission and under said assessment, there was duly placed upon the tax roll of the Treasurer of the plaintiff county the said assessment against the defendant corporation as theretofore determined by law and by action of the tax commission as aforesaid: $49,204.84; that the said amount of $49,204.84 appeared on the September 1, 1932 roll and the same became delinquent on October 1, 1932, that no part of said assessment of $49,204.84 has been paid and that there is now due and payable from the defendant to this plaintiff the sum of $49,204.84 plus interest and penalties as provided by law.

Wherefore plaintiff demands judgment against the defendant in the sum of $49,204.84 with interest and penalty as provided by law, together with the costs and disbursements of this action.

GEORGE A. BOWMAN,
District Attorney,
O. L. O'BOYLE,
Corporation Counsel,
CLARK J. A. HAZELWOOD,
Assistant Corporation Counsel.

State of Wisconsin }
Milwaukee County } ss.

PATRICK McMANUS, being first duly sworn on oath says that he is the County Treasurer of Milwaukee County, the plaintiff in the above entitled action, and makes this verification for and on its behalf and is duly authorized so to do; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his knowledge except as to such matters therein stated on information and belief, and as to such matters he believes it to be true; that the reason he makes this verification is that the plaintiff is a body corporate and he is such officer as aforesaid; that the sources of his knowledge and the grounds of his belief are his connection with the affairs of said County as such officer, and the records and papers of said plaintiff County in his possession.

PATRICK McMANUS.

Subscribed and sworn to before me this 26th day of October, A. D. 1932.

FRANK G. GREGORY,
Notary Public, Milwaukee County, Wisconsin.

Filed Nov. 1, 1932 C. C. Maas, Clerk.

UNITED STATES OF AMERICA.

State of Wisconsin }
Department of State } ss.

To All to Whom These Presents Shall Come, Greetings:

I, Theodore Dammann, Secretary of State of the State of Wisconsin, and Keeper of the Great Seal thereof, do hereby certify that on the 28th day of October, A. D. 1932, there were received by me, pursuant to the provisions of section 226.02 of the Wisconsin Statutes, two copies of Summons and Complaint in an action brought in the Circuit Court for Milwaukee County, wherein Milwaukee County, is plaintiff and M. E. White Company, defendants.

I further certify that the fee of Two Dollars required by the Wisconsin Statutes has been paid.

I further certify that one of said copies has been by me filed in this office; and the other of said copies was by me

forthwith mailed to M. E. White Company one of the defendants named in said action, in an envelope with the postage thereon duly paid, directed to 1735 Fullerton Ave., Chicago, Illinois, the place named in the last sworn statement of said corporation filed in this department as the principal place of business.

In Testimony Whereof, I have hereunto set my hand and affixed the great seal of the State of Wisconsin at the Capitol, in the City of Madison, this 28th day of October, A. D. 1932.

THEODORE DAMMANN;
(Seal) *Secretary of State.*

Filed Nov. 1, 1932, C. C. Maas, Clerk.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County, *Plaintiff,*
vs.
M. E. White Company, a foreign corporation, *Defendant.*

AFFIDAVIT OF NO ANSWER.

Filed Jan. 26, 1933 Jas. L. McCormack, Clerk.

CLARK J. A. HAZELWOOD, being duly sworn on oath, deposes and says that he is one of the attorneys for the plaintiff in the above entitled action; that defendant's time for answer, demurrer or other appropriate pleading has expired; that no such pleading has been filed nor served; that defendant is in default.

CLARK J. A. HAZELWOOD.

Subscribed and sworn to before me this 25th day of January, 1933.

J. J. MALLOY,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

Filed Jan. 26, 1933 Jas. L. McCormack, Clerk.

The summons and verified complaint herein having been filed in the office of the Clerk of this court on the 1st day of November, 1932, showing proof of service on the defendant foreign corporation by the filing of a copy thereof with the office of the Secretary of State of the State of Wisconsin, and by the transmission of a copy thereof by the secretary of state by mail to the defendant at 1735 Fullerton Avenue, Chicago, Illinois prior to November 1, 1932, it appearing that said cause of action herein in this state and that said service on the defendant foreign corporation has been in compliance with the statutes relating thereto, and no answer or other pleading having been served on the plaintiff's attorney, and no appearance having been entered herein by the defendant of anyone on its behalf, and an affidavit of no answer being on file;

It further appearing that more than twenty days have expired since said service on the defendant corporation, Now, Therefore, on motion of plaintiff's attorneys, and upon testimony and other proof duly introduced before that branch of this court presided over by the undersigned and upon all the pleadings, record and file herein, the Court hereby makes and files the following Findings of Fact and Conclusions of Law:

1. That plaintiff is a municipal body corporate, organized and existing under the laws of this state and that plaintiff is duly authorized by law to prosecute this action for income tax delinquencies.

2. That defendant is a foreign corporation, licensed to do business in the state of Wisconsin and that the cause of action herein arose within this state.

3. That, against the said defendant, M. E. White Company, an assessment of income tax indebtedness was duly made by the tax commission of the State of Wisconsin, upon due notice of same given by registered mail on February 4, 1932; that the said defendant appealed from said assessment, to the Wisconsin Tax Commission, which upheld the said assessment and gave notice of said affirmance to the defendant by registered mail on July 29, 1932; that more than thirty days have passed since the latter notice and no further appeal has been taken.

4. That the amount of said assessment for delinquent income tax indebtedness as heretofore determined by the said tax commission is $49,204.84.

5. That said assessment was duly placed upon the tax roll of plaintiff county as of September 1, 1932 in said amount of $49,204.84 and the same became delinquent on October 1, 1932 and no part of same has been paid.

Conclusions of Law.

That plaintiff, Milwaukee County is entitled to judgment on its complaint herein in the sum of $49,204.84 plus a penalty of 2% and plus interest computed at the rate of 1% per month from and after October 1, 1932 and that judgment may accordingly be entered as follows:

Income tax delinquency	$49,204.84
Interest and penalty	2,952.00
Total damages	$52,156.84

Let judgment be entered accordingly, together with plaintiff's costs.

Dated at Milwaukee, Wisconsin, January 26, 1933.

By the Court,

DANIEL W. SULLIVAN,
Circuit Judge.

STATE OF WISCONSIN: CIRCUIT COURT: MILWAUKEE COUNTY.

Milwaukee County,
Plaintiff,
vs.
M. E. White Company, a foreign corporation,
Defendant.

JUDGMENT.

Filed Jan. 26, 1933 Jas. L. McCormack, Clerk.

It appearing that this Court, the Hon. Daniel W. Sullivan, Circuit Judge presiding, has made and filed Findings of Fact and Conclusions of Law directing that judgment be entered in favor of the plaintiff and against the defendant,

Now, Therefore, on said findings of fact and conclusions of law, and on all the record, files and proceedings, in the above entitled action,

It Is Hereby Ordered, Determined and Adjudged that the plaintiff, Milwaukee County, do have and recover judgment against the defendant M. E. White Company as follows:

Principal amount	$49,204.84
Int. and penalty	2,952.00
Total damages	$52,156.84

together with the plaintiff's costs hereby taxed and allowed in the sum of $21.09.

Dated at Milwaukee, Wis.

By the Court,

JAS. L. MCCORMACK,
Clerk.

By N. J. SAVIGNAC.

Statement of Judgment.

Damage	$49,204.84
Int. and penalty	2,952.00
Total	$52,156.84
Costs	21.09
	$52,177.93

Judgment entered and docketed this 26th day of January, 1933 at 10:45 o'clock A. M.

Paragraph Four—And plaintiff avers that said judgment is still in full force and effect, as by the record and proceedings thereof still remaining in said Court, will more fully appear; that said judgment has not been in any wise reversed, vacated or satisfied.

Paragraph Five—And therefore an action has accrued to plaintiff to demand and have from the defendant the sum aforesaid, to-wit: Fifty Two Thousand One Hundred Fifty Six Dollars and Eighty Four Cents ($52,156.84) with interest at the rate of six per cent (6%) per annum from and after the 26th day of January, 1933, together with costs in the sum of Twenty One Dollars and Nine Cents ($21.09).

Paragraph Six—Yet the defendant, though requested, has not paid the said sum or any part thereof to the plaintiff but has wholly neglected and refused and still neglects and refuses so to do.

To the damage of the plaintiff in the sum of Sixty Thousand Dollars ($60,000.00),

Wherefore, plaintiff brings this suit.

Second Count.

Paragraph One—The ground upon which the jurisdiction of this Court depends is diversity of citizenship. Plaintiff, Milwaukee County, is now and was at all the times herein mentioned a county created, organized and existing under the laws of the State of Wisconsin, and a citizen of said State. Defendant, M. E. White Company, is a corporation organized and existing under the laws of the State of Illinois, is a citizen and inhabitant of said State and has a regular and established place of business in the City of Chicago in said State.

Paragraph Two—The matter in controversy herein exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars ($3000.00).

Paragraph Three—Whereas, the plaintiff to-wit: at the January Term in the year 1933 of the Circuit Court of the County of Milwaukee in the State of Wisconsin, the same being a court of general jurisdiction duly created and organized under the laws of said State, to-wit: on the 26th day of January, A. D. 1933, it was adjudged that the plaintiff do have

and recover of and from the defendant its damages in the sum of Fifty Two Thousand One Hundred Fifty Six Dollars and Eighty Four Cents ($52,156.84) with interest on said sum at the rate of six per cent (6%) per annum from and after said date, and the further sum of Twenty One Dollars and Nine Cents ($21.09) for plaintiff's costs in that behalf expended (a copy of which said judgment is set forth in the first count of this declaration and made a part hereof by reference) whereof said defendant was and stands convicted as by the record and proceedings thereof remaining in said court more fully appear, an exemplified transcript of which plaintiff now stands ready to produce in open court, which said judgment still remains in full force and effect, not reversed, satisfied or otherwise vacated and the said plaintiff has not obtained any payment or satisfaction thereof or upon said judgment so recovered as aforesaid, whereby an action has accrued to the said plaintiff to demand and have from said defendant the said sum of Fifty Two Thousand One Hundred Fifty Six Dollars and Eighty Four Cents ($52,156.84), and the interest and costs aforesaid.

To the damage of the plaintiff in the sum of Sixty Thousand Dollars ($60,000.00),

Wherefore, plaintiff brings this suit.

WILLIAM A. ZABEL,
OLIVER L. O'BOYLE,
CLARK J. A. HAZELWOOD,
JAMES G. CULBERTSON,
Attorneys for the Plaintiff.

EXHIBIT 2.

MOTION TO DISMISS.

And now comes M. E. White Company, a corporation, defendant herein, by Montgomery, Hart, Pritchard & Herriott, its attorneys, and moves the court to dismiss the above entitled cause and for grounds of its said motion, the said defendant shows:

I. That under the laws and statutes of the State of Wisconsin, Milwaukee County, plaintiff herein, is without power or authority to maintain this action.

II. That under the laws and statutes of the State of Wisconsin, this action must be brought by the County Treasurer of said county, in the name of said county.

III. That under the laws and statutes of the State of Wisconsin, the attorneys, or either of them, for the plaintiff herein, are without authority to prosecute this action.

IV. That this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action.

For the above and diverse other good and sufficient reasons appearing on the face of the second amended declaration, and other of plaintiff's pleadings heretofore filed herein, this defendant prays that the above entitled cause be dismissed at the costs of the plaintiff.

MONTGOMERY, HART, PRITCHARD & HERRIOTT,
Attorneys for M. E. White Company, Defendant herein.

EXHIBIT 3.

MEMORANDUM.

July 16, 1934.

WOODWARD, *District Judge:*

This is a motion to dismiss an action brought by Milwaukee County, Wisconsin, against the M. E. White Company, a corporation, on a judgment obtained against the White Company in the Circuit Court of Milwaukee County, Wisconsin.

The pleadings show that on January 26, 1933 Milwaukee County, Wisconsin, recovered a judgment against the defendant in the Circuit Court of Milwaukee County, Wisconsin in the sum of $52,156.84 for delinquent income tax, penalty and interest, assessed against the defendant for state income tax indebtedness by the Tax Commissioner of Wisconsin. This suit is brought upon that judgment.

It is urged, in support of the motion, that this court will not exercise jurisdiction over, or take cognizance of, the subject matter of this action.

It seems to be well settled that neither the State of Wisconsin, nor Milwaukee County, could maintain an action either in the State Courts of Illinois, or in a Federal Court sitting in Illinois, to collect a State Income Tax levied and assessed under the laws of Wisconsin. Income taxes are levied and collected to support the government. Taxes are imposts, not debts. The income tax law of Wisconsin is one of the revenue

laws of that state. The enforcement of the revenue law rests, not on consent, but on force. The revenue laws of one state have no force in another. The uniform rule is that the tax laws of one state cannot be given extra territorial effect so as to make collections through the agency of the courts of another state. *Moore* v. *Mitchell*, 30 Fed. (2) 600; *State of Colorado* v. *Harbeck*, 232 N. Y. 71; *In the Matter of Bliss*, 202 N. Y. Supp. 185; *New York Trust Company* v. *Island Oil and Transport Corporation*, 11 Fed. (2) 698.

The recent case of *Moore* v. *Mitchell, Supra*, contains a careful statement of the law on this subject.

Does the fact that the revenue demand of the state has been reduced to judgment, and the judgment is sued upon in a sister state, or in a Federal Court sitting in a sister state, change the well established rule above referred to?

In the case of *Huntington* v. *Attrill*, 146 U. S. 657, the court says:

> "The essential nature and real foundation of a cause of action, indeed, are not changed by recovering a judgment upon it."

To the same effect is the language of the court in the case of *State of Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, where it is said:

> "The essential and nature and real foundations of a cause of action are not changed by recovering judgment upon it; and the technical rules which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim) from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it."

In the tentative draft of the "Restatement of the Law of Conflict of Laws", Sec. 621 (Draft 34, October 16, 1930) it is said:

> "Action on Judgment on Government Claims. No action can be maintained on a foreign judgment which has been obtained in favor of a state, a state agency, or a private person on a cause of action created by the law of a foreign state as a method of furthering its own governmental interests."

"Furthering its own governmental interests" clearly includes the collection of taxes.

Attention has been called to the fact that the draft of the Restatement of the Law has not been fully approved, but it embodies the law as laid down in the cases above referred to.

In substance, the plaintiff invokes the aid of this court to enforce, within the State of Illinois, the revenue laws of Wisconsin. Under the authorities, as the court understands them, this cannot be done.

The precise question submitted by this record has not, so far as the court can find, been passed upon by the Supreme Court of the United States. The conclusion here reached is, I believe, supported by the adjudications already made.

I am not unmindful of the recent holding of the Supreme Court of New Jersey in the case of *People* v. *Coe Manufacturing Company*, 162 Atl. 872, which held that a suit might be maintained in the New Jersey courts on a judgment based on a franchise tax claim of the state of New York. Until this decision, or one embodying the same principle, is affirmed by the Supreme Court of the United States, I prefer to follow what I believe to be the rule announced by the Federal Courts.

The motion to dismiss will, therefore, be sustained.